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#### Medical Privacy Bills Could Be Costly for Health Care Industry and Consumers

Businesses in the health care industry will face significant challenges in the 2008 legislative session. The biggest challenge will be continued attempts to control the use of health information in the interest of protecting individual privacy rights. While some of the privacy bills currently under consideration in the Legislature affect the business community generally, there are at least two that are targeted specifically at health care information and that could have a costly impact on providers, insurers, business owners, and employees.

HB 1587 is a twelve-page bill that seeks to expand the scope of federal laws regulating health information and to bring enforcement of health privacy laws within state jurisdiction. The intent of sponsors in introducing the bill is laudable: to give patients more control over information in their medical records. However, in practice, the bill could interrupt efficient delivery of care, create confusion among medical office workers and patients, and, in a worst-case scenario, diminish the quality of care that is delivered to New Hampshire citizens.

All stakeholders agree that consumers are entitled to privacy, particularly with respect to their health information. However, an appropriate balance between the protection of privacy and other factors is important, factors such as coordination of services among providers, impact of increased systems costs on the already rising cost of health care, potential impact of the bill on the increasing and desired use of electronic medical records, and excessive inconvenience for consumers and their families.

HB 1587 was assigned to a subcommittee that will review the bill line-by-line and discuss concerns raised by stakeholders in the order in which they arise in the bill. Stakeholders, of course, already understood how complicated the changes proposed in HB 1587 are. That became quickly apparent to legislators as well, when, during the first subcommittee meeting, discussion got bogged down by the differences between an "audit trail" and an "accounting of disclosures" and failed to proceed past page 2 of the bill. As with many provisions in HB 1587, this small change in wording could lead to major changes in health information management. Under federal law and in HB 1587, individuals are entitled to an accounting of all disclosures of their personal health information that are not specifically authorized in law. HB 1587 would make individuals entitled to an audit trail of *all* access to their medical records by others. The size of such an audit trail could exceed the size of the medical record itself and would require significant increases in information storage capacity. Additionally, in order for the information contained in such an audit trail to be

meaningful to an individual, significant personnel time would be needed to distinguish appropriate access from inappropriate access, if any.

It is unclear whether the HB 1587 subcommittee will be able to sufficiently analyze the bill within the time frame available since it is the second year of the biennium and the House has less time this year to deal with an equal or greater number of bills than it considered last year. That said, the prime sponsor of HB 1587 serves as Chair of the House committee to which the bill was referred, and she is strongly motivated to get HB 1587 passed.

HB 1138 appeared benign at first, but is actually just as much a threat as HB 1587. HB 1138 states that a healthcare provider shall not place a patient's personal health information on the Internet without prior written consent. The key to this bill lies in the definition of "on the Internet" and whether this phrase refers to the posting of information on a website or includes transmission of information through use of the Internet. During testimony on the bill, it became clear that the prime sponsor intends the latter. Such a prohibition could slow down communication of test results, impede growth of the telemedicine industry which is a critical component to health care access in rural areas, and, in some circumstances, put New Hampshire health care providers in conflict with federal law. HB 1138 was assigned to the same subcommittee as HB 1587 and, to the degree it is viable, it will be rolled into that bill.

Entities with concerns about these two bills will have to work hard this year since the constituency in favor of increased privacy protection appears to be gaining strength and momentum. An example of this occurred on the House floor this week when a bill aimed at curbing illegal use and sale of prescription drugs was killed by three votes despite strong support from a House committee, the Attorney General, and others. Committee reports are rarely overturned on the floor of the House, and almost never overturned when the committee recommendation is supported by a 15-3 vote as this one was.

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## CHAMBER INSIGHT:

### **State of the State Sets the tone for 2008 Legislative Session**

As reported last week, Governor Lynch recently appeared in front of the House Finance Committee with news that the State revenue collections were not performing up to previous expectations. The Governor released a statement soon afterwards urging legislators to exercise extreme fiscal restraint this session. In that statement the Governor went on to pledge he would veto any new spending bills passed during the 2008 session. The Governor kept up this message in this week's State of the State address to the legislature. He restated his pledge to not support any new spending bills and has promised to work with agency heads to develop a balanced budget.

What this means for the 2008 session is not entirely clear just yet, but some of the potential outcomes are not desirable for the business community. With a significant budget deficit and lagging revenues, legislators will be on the look out for new revenue sources. The GMCC, along with other business organizations, must remain vigilant in ensuring the business community is not targeted for new revenue through new fees or taxes. Legislators must realize that the business community already contributes more than its fair share in state revenues. New fees or taxes would only hurt the state's business attraction and

retention efforts and overall economic growth during a time when the national economy appears to be slowing. Rest assured, the GMCC and other organizations will continue to fight any new fees or taxes that will impact the bottom line for New Hampshire business.

The other negative outcome we may face due to the budget situation is a potential lack of progress on several key infrastructure and economic development related projects. Projects such as Commuter Rail, the I-93 widening project, and the 10 year Highway Plan all will face much scrutiny from lawmakers when allocating funds. The GMCC will strongly advocate for the full funding of these projects and several others like it. Without a sound infrastructure, the Greater Manchester region will be unable to support its growing business community and unable to attract new business to region. Ignoring projects such as these now will only add to the difficulties facing our economy going forward.

Overall, with the looming budget situation and the dynamics of election year politics it looks as if the 2008 session will be challenging for all parties, including the business community. The GMCC, however, is committed to making progress this session and protecting the interests of the business community. Despite the budget pressures facing the legislature there are several promising proposals working their way through the legislature that may help stabilize health insurance costs for small employers, and address the workforce housing shortage facing NH.

If you have a question regarding any pending legislation please do not hesitate to contact the Chamber. The GMCC is here to be your business advocate and your voice in Concord. In order for us to do so effectively, we need feedback from you! Please direct any questions to [michaels@manchester-chamber.org](mailto:michaels@manchester-chamber.org) or call (603) 792-4107.

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